

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFFREY WAYNE JINKA, JR.,

Appellant,

v.

SILVERLINE PROPERTIES LLC,

Appellee.

In re: Jeffrey Wayne Jinka, Jr.,

Debtor.

CASE NO. 2:24-cv-1900-JNW

Bankruptcy No. 2:24-12585-TWD

ORDER DENYING MOTION TO
STAY PENDING APPEAL

1. INTRODUCTION

Debtor Jeffrey Wayne Jinka, Jr. has appealed an interlocutory order of the U.S. Bankruptcy Court for the Western District of Washington, and he requests a stay of that order pending appeal. Dkt. No. 2. After considering Jinka's motion to stay pending appeal, the record, and the applicable law, the Court DENIES the motion as moot, or alternatively, on the merits.

2. BACKGROUND

On July 19, 2024, Appellee Silverline Properties, LLC¹ purchased Jinka's home at a foreclosure sale. Bankr. Dkt. No. 12-1 ¶¶ 1, 2, and Ex. 1. Jinka held over at the property, so Silverline began an unlawful detainer action in state court, receiving a writ of restitution. *See id.* ¶¶ 10–15. At Jinka's request, the state court temporarily stayed Silverline's writ and set a rehearing date of October 11, 2024. *See id.* ¶¶ 19–20.

Jinka filed for bankruptcy on October 10, 2024, which automatically stayed Silverline's state-court, eviction proceedings. *See* Bankr. Dkt. No. 1; 11 U.S.C. § 362(a)(2) (stating that certain bankruptcy petitions "operate[] as a stay, applicable to all entities, of [] . . . any act to obtain possession of property of the estate . . ."). Silverline promptly moved for relief from the automatic stay so that it could press forward with its state-court case. *See* Bankr. Dkt. No. 12. Soon after, Jinka moved for a temporary restraining order (TRO). *See* Bankr. Dkt. No. 22. On November 6, 2024, the Bankruptcy Court granted Silverline's motion and denied Jinka's. While Jinka appeals both orders, this matter only addresses his appeal of the order denying his motion for a temporary restraining order, Bankr. Dkt. No. 32. *See* Dkt. No. 1-2 (9th Cir. BAP Order Regarding Number of Appeals).

When he appealed, Jinka moved to stay the Bankruptcy Court's order granting Silverline relief from the automatic stay pending appeal, but he did not

¹ In a related matter, Silverline explains that it "has been docketed as 'Solverline', a typographical error." *In re Jeffrey Wayne Jinka, Jr.*, 2:24-cv-1895-JNW, Dkt. No. 5 at n.1.

1 move to stay the order denying a TRO pending appeal. *See* Bankr. Dkt. No. 36 and
 2 *generally*. The Bankruptcy Court denied the motion to stay the order granting
 3 Silverline relief pending appeal. *See* Bankr. Dkt. No. 44; Case No. 2:24-cv-1895-
 4 JNW, Dkt. No. 4; Dkt. No. 2. Three days later, on November 18, 2024, the
 5 Bankruptcy Court dismissed Jinka’s case for his failure to appear at his 11 U.S.C.
 6 § 341 meeting of creditors. *See* Bankr. Dkt. No. 55; Local Rules W.D. Wash.
 7 Bankr. 1017(e). Jinka has not appealed the dismissal.

8 Jinka now asks this Court to stay the denial of his motion for a TRO pending
 9 appeal.

10 3. DISCUSSION

11 3.1 Jinka’s motion to stay the Bankruptcy Court’s TRO denial pending 12 appeal is moot.

13 Jinka’s motion asks the Court to stay the Bankruptcy Court’s denial of his
 14 motion for a TRO—effectively, Jinka asks this Court to grant a TRO reinstating the
 15 automatic stay. While the bankruptcy case was pending, Silverline could only
 16 proceed with its state-court unlawful detainer action by seeking relief from the
 17 automatic stay. *See* 11 U.S.C. § 362(a)(2) (stating that certain bankruptcy petitions
 18 “operate[] as a stay, applicable to all entities, of [] . . . any act to obtain possession of
 19 property of the estate . . .”). But when Jinka’s bankruptcy case was dismissed, the
 20 automatic stay resolved on its own under the relevant statute. *See*
 21 11 U.S.C. § 362(c)(2)(B) (stating that “the stay . . . continues until . . . the time the
 22 case is dismissed”); *see also Olive St. Invs. v. Howard Sav. Bank*, 972 F.2d 214, 216
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1 (8th Cir. 1992) (holding debtor’s right to automatic stay expires when “the
2 bankruptcy proceeding is dismissed”).

3 In short, an order from this Court staying the Bankruptcy Court’s
4 interlocutory ruling on an automatic stay that has since resolved in a dismissed
5 bankruptcy action would have no effect at all. *See In re Ponton*, 446 Fed. App’x. 427,
6 429 (3d Cir. 2011) (finding that dismissal of bankruptcy case mooted appeal of
7 interlocutory order granting relief from automatic bankruptcy stay); *cf. Cummins v.*
8 *Solgen Power*, Case No. 23-cv-5363-JLR, LLC, 2023 WL 5277689, at *1 (W.D. Wash.
9 Aug. 16, 2023) (Robart, J.) (finding motion to dismiss was moot because it targeted a
10 superseded, non-operative complaint). Accordingly, Jinka’s motion to stay pending
11 appeal is moot.

12 **3.2 Even if the motion were not moot, it fails on the merits.**

13 Under the Bankruptcy Rules, a debtor usually must move to stay pending
14 appeal in the bankruptcy court before requesting a stay from the reviewing court—
15 the district court in this case. *See* Fed. R. Bankr. P. 8007(a)(1)(A); *In re Borjesson*,
16 Case No. 19-0413-MJP, 2019 WL 1327324 (W.D. Wash. March 25, 2019) (Pechman,
17 J.) (citing *In re Rivera*, Case No. 5:15-cv-04402-EJD, 2015 WL 6847973, at *2 (N.D.
18 Cal. Nov. 9, 2015) (“A failure to seek emergency relief in the bankruptcy court is a
19 critical defect and not often overlooked.”)). If the bankruptcy court denies the
20 motion, the debtor may file a separate motion to stay pending appeal in the district
21 court. *See* Fed. R. Bankr. P. 8007; *In re Irwin*, 338 B.R. at 844.

1 Here, Jinka moved to stay the Bankruptcy Court's order granting Silverline
2 relief from the automatic stay pending appeal, which is the subject of a related
3 bankruptcy appeal. *See* Bankr. Dkt. No. 36; Case No. 2:24-cv-1895-JNW, Dkt. No. 4.
4 Jinka did not move to stay the Bankruptcy Court's order denying his motion for a
5 TRO, the subject of this appeal. Accordingly, the Court denies the motion on that
6 basis.

7 Further, even if the Court considers his motion for an emergency stay of the
8 TRO denial on the merits, it denies the motion for the same reasons articulated in
9 the related matter. *See* Case No. 2:24-cv-1895-JNW, Dkt. No. 7.

10 Parties are not entitled to stays pending appeal as a matter of right. *Lair v.*
11 *Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012); *Nken v. Holder*, 556 U.S. 418, 433
12 (2009); *In re Borjesson*, 2019 WL 1327324, at *1. In bankruptcy appeals, motions to
13 stay pending appeal must include "the reasons for granting the relief requested and
14 the facts relied upon," "affidavits or other sworn statements supporting facts subject
15 to dispute," and "relevant parts of the record." *In re Borjesson*, 2019 WL 1327324, at
16 *1 (quoting Fed. R. Bankr. P. 8007(b)(3)) (denying emergency motion for TRO or
17 stay pending bankruptcy appeal). Courts consider the following factors when
18 deciding whether to grant a stay pending appeal:

- 19 (1) whether the stay applicant has made a strong showing that he is
20 likely to succeed on the merits;
- 21 (2) whether the applicant will be irreparably injured absent a stay;
- 22 (3) whether issuance of the stay will substantially injure the other
23 parties interested in the proceeding; and
- (4) where the public interest lies.

1 *Lair*, 697 F.3d at 1203 (quoting *Nken*, 556 U.S. at 434); *see also In re Borjesson*,
2 2019 WL 1327324, at *2 (citing *DSB Credit Funding LLC v. Silicon Labs, Inc.*,
3 Case No. 16-CV-05111-LHK, 2016 WL 6893882, at *6 (N.D. Cal. Nov. 23, 2016)
4 (“Appellants seeking a discretionary stay under Rule 8007 must meet the terms of a
5 test virtually identical to that for a preliminary injunction.”) (citation omitted)).
6 “The party requesting a stay bears the burden of showing that the circumstances
7 justify an exercise of [this Court’s] discretion.” *Lair*, 697 F.3d at 1203 (modification
8 in original).

9 Regarding the first prong, Jinka provided only a vague and unsupported
10 argument about why he was likely to succeed on the merits of his appeal. Bankr.
11 Dkt. No. 36 at 14. Rather than pointing to any error in the Bankruptcy Court’s
12 order, Jinka argued that the original foreclosure of his home was subject to
13 procedural irregularities. *See* Bankr. Dkt. No. 36 at 17–19 and *generally*. Since
14 Jinka failed to advance an argument about the merits of his appeal, the Bankruptcy
15 Court correctly concluded that he failed to show a likelihood of success.

16 On the second prong, Jinka argued that he would face irreparable harm
17 absent a stay because he would face eviction. Bankr. Dkt. No. 36 at 14. But the
18 Bankruptcy Court aptly concluded that Jinka may challenge his eviction through
19 the ongoing unlawful detainer action in state court. *See* Bankr. Dkt. No. 44 at 3.
20 Given the record, including the evidence establishing Silverline’s ownership of the
21 property and the nature of the underlying unlawful detainer proceedings, Silverline
22 will be harmed if it is forced to wait to pursue its state-court action pending this
23

1 appeal; it will be unable to take possession of the property it purchased and resolve
2 any challenges to its ownership of that property. Finally, the public interest is
3 served by resolving the state-court matter efficiently, as Jinka's challenge to the
4 underlying foreclosure and his eviction will be decided in that proceeding.

5 For the reasons above, the Court finds that none of the relevant factors weigh
6 in favor of a stay.

7 **4. CONCLUSION**

8 The Court ORDERS that Jinka's emergency motion to stay pending appeal,
9 Dkt. No. 2, is DENIED AS MOOT. In the alternative, the motion is DENIED on the
10 merits. It is so ordered.

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12 Dated this 26th day of November, 2024.

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15 Jamal N. Whitehead
16 United States District Judge
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